WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2001 Assembly Bill 809	Assembly Amendments 1 and 2
Memo published: February 27, 2002	***Contact*: Anne Sappenfield, Senior Staff Attorney (267-9485)**

ASSEMBLY AMENDMENT 1

Parents' Participation in Temporary Custody Hearing

Under current law, a child may be taken into temporary physical custody, generally for safety reasons, before a children in need of protection or services (CHIPS) petition is filed. If a child is taken into custody, a hearing must be held within 48 hours, excluding weekends and holidays. At that hearing, the juvenile court ("court") must determine whether to order the child to be held in temporary physical custody. A parent, guardian, or legal custodian may waive his or her right to a temporary physical custody hearing. After any waiver, however, a hearing must be granted at the request of any interested party. Also, a parent who is not present or not represented by counsel at the temporary physical custody hearing must be granted a rehearing upon request.

Under the bill, the parent, guardian, or legal custodian may waive his or her right to participate in the temporary physical custody hearing. After a waiver, a rehearing must be granted at the request of the parent, guardian, legal custodian, or any other interested party for good cause shown. A parent who waives his or her right to participate in the temporary physical custody hearing may be granted a rehearing if he or she is not present or is not represented by counsel at the temporary physical custody hearing only for good cause shown.

Assembly Amendment 1 provides that any parent who is not present at the temporary physical custody hearing must be granted a rehearing upon request for good cause shown and any parent not represented by counsel must be granted a rehearing upon request. Whether or not they have waived the right to participate in the temporary physical custody hearing is not a factor for these requests under the amendment.

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Findings at the Temporary Physical Custody Hearing

Under the bill, the court must include in an order for temporary physical custody the findings that placement of the child in his or her home would be contrary to the welfare of the child and that reasonable efforts have been made, if required, to return the child to his or her home. If, for good cause shown, sufficient information is not available for the judge or the juvenile court commissioner to make those findings, the judge or juvenile court commissioner must order the county department of human or social services, the Department of Health and Family Services (DHFS), or the child welfare agency primarily responsible for providing services to the child to file with the court sufficient information to make those findings no later than five days after the date of the temporary physical custody order.

Under the amendment, the finding that placement of the child in his or her home is contrary to the child's welfare must be made at the temporary custody hearing. If sufficient information is not available for the judge or juvenile court commissioner to make the findings that reasonable efforts were made to prevent the removal of the child from his or her home and to make it possible for the child to return safely home, the judge or juvenile court commissioner must order the county department, DHFS, or the child welfare agency primarily responsible for providing services to the child to file with the court sufficient information to make those findings no later than five days after the date of the temporary physical custody order.

Petition for Involuntary Termination of Parental Rights

Under current law, a county department, DHFS, or a licensed child welfare agency, or the district attorney (DA) or corporation counsel must file a termination of parental rights (TPR) petition, or must join a TPR petition that has already been filed, if a child has been placed outside of his or her home for 15 of the most recent 22 months.

Under the bill, in determining that a child has been placed outside of his or her home for 15 of the most recent 22 months, the bill provides that the time period does not include any period during which the child was a runaway from the out-of-home placement or the child was returned to his or her home for a trial visit of six months or less.

The amendment provides that the period that the child has been placed outside of his or her home does not include the first six months of any trial visit, instead of any trial visit of six months or less. In addition, under the amendment, if a juvenile is placed in a secured placement under the Juvenile Justice Code for 60 days or more and then moved to a nonsecured out-of-home placement, the juvenile is considered to be placed outside of his or her home on the date he or she is moved to the nonsecured placement.

Permanency Plan Goals

Under the bill, a child's permanency plan must include the goal of the permanency plan. The agency must determine the goal or goals of the permanency plan in the following order of preference:

a. Return of the child to the child's home.

b. Placement of the child for adoption.

c. Placement of the child with a guardian.

d. Permanent placement of the child with a fit and willing relative (other than adoption by or under the guardianship of a relative).

e. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

Under the amendment, the agency must determine one or more of the listed possible goals to be the goal or goals of the permanency plan.

Delays and Continuances

Under the bill, no continuance of a time limit specified in the Children's Code or the Juvenile Justice Code may be granted and no period of delay may be excluded in computing a time limit if, as a result of the continuance, extension or exclusion, the time limits for the court to make a finding that reasonable efforts have been made to prevent the removal of the child from the home, an initial finding that those efforts are not required, or an initial finding that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goals of the permanency plan would be exceeded.

The bill specifies that failure to comply with any of the above time limits does not deprive the court of jurisdiction or of competency to exercise that jurisdiction. If a party does not comply with one of the above time limits, however, the court may dismiss the proceeding with or without prejudice, release the child from custody, or grant any other relief that the court considers appropriate.

Under the amendment, if the court grants a remedy for an exceeded time limit, it must do so while assuring the safety of the child.

Notice of Permanency Plan Hearing

Under the bill, not less than 30 days before a permanency plan hearing, the court must notify the child; the child's parent, guardian, and legal custodian; the child's foster parent, treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living; the child's court-appointed special advocate; the agency that prepared the permanency plan; and the DA or corporation counsel of the date, time, and place of the hearing.

Under the amendment, the court must also notify the child's counsel and the child's guardian ad litem.

ASSEMBLY AMENDMENT 2

Under current law, foster parents, treatment foster parents, and other physical custodians are given notice of and the opportunity to submit a written or oral statement to the court for various hearings under the Children's Code and the Juvenile Justice Code. Some of the provisions permitting the submission of a written or oral statement require that the statement be made under oath or affirmation.

The bill requires that any written or oral statement to the court by a foster parent, treatment foster parent, or physical custodian be made under oath or affirmation.

Assembly Amendment 2 removes the requirement that such statements be made under oath or affirmation.

The Assembly adopted Assembly Amendments 1 and 2 on a voice vote and passed Assembly Bill 809 on a vote of Ayes, 97; Noes, 2, on February 26, 2002.

AS:tlu:ksm;ksm;tlu